

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Pollyann Sorcan,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Rock Ridge School District (Independent School District No. 2909); and Board Chair Bill Addy, in his official capacity as Chair, and any successor,</p> <p style="text-align: center;">Defendants.</p>	<p>Court File No. _____</p> <p style="text-align: center;">COMPLAINT JURY TRIAL DEMANDED</p>
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INTRODUCTION

1. Pollyann Sorcan has served on the Eveleth, the consolidated Eveleth-Gilbert, and now the Board of the consolidated Rock Ridge Public Schools (Independent School District 2909 (“ISD 2909”)) (“District”), for more than 20 total years spanning over the course of 36 years. Ms. Sorcan was most recently re-elected to the Board on November 8, 2022.

2. In her capacity as an elected Board member, Ms. Sorcan attends and participates in Board meetings at which she advocates on behalf of the interests of her constituents, and, despite Defendants’ ongoing retaliation against her for her advocacy, she attends or attempts to attend Board committee meetings.

3. Ms. Sorcan’s advocacy in Board meetings includes raising questions and making comments relevant to the District’s business, supporting or opposing strategies or actions related to the District’s business, and other such speech.

4. Ms. Sorcan has consistently advocated for fiscal discipline and consistently asks questions of speakers designed to determine the cost and value of different services and initiatives to the District and its taxpayers.

5. Because of her emphasis on fiscal discipline, other Board members less concerned about the fiscal impact of District actions on taxpayers have taken unreasonable offense to her advocacy.

6. Ms. Sorcan has also consistently supported reasonable requests from members of the public who wish to be heard by the Board at public meetings, and to ask meaningful questions of agenda speakers and other Board members to be well-informed on issues requiring Board direction and voting. By doing so, Ms. Sorcan has sought to scrupulously follow the Rock Ridge School Board Code of Ethics, Policy 209, which requires Board members to, among other things, “[l]isten to the opinions and views of others...including...other school board members...and community members,” and “[v]ote [her] conscience after informed discussion.”

7. Other Board members less supportive of reasonable requests by the public to speak to the Board at public meetings and offended by Ms. Sorcan’s efforts to follow the Code of Ethics have taken unreasonable offense to her positions on those issues, as well.

8. On August 9, 2021, in retaliation for her political advocacy, support of the community, and attempts to be truly informed on important issues directly relevant to the Board’s actions, the Board passed a resolution censuring Ms. Sorcan for a litany of conclusory allegations that failed to specify the date or factual circumstances of the alleged violations of Board rules or other purported standards of conduct.

9. As part of Ms. Sorcan's censure, she was removed from "any and all School Board committee assignments until such time as the Board decides that Ms. Sorcan may again be assigned to committees."

10. Ms. Sorcan's removal from all of her committee assignments and the District's and Board Chair's ongoing refusal to assign her to any committees was a retaliatory punishment against Ms. Sorcan's protected First Amendment speech exercised on behalf of her constituents, and beyond mere censure itself.

11. Compounding matters, the District recently took the position that not only was Ms. Sorcan barred from appointment to any committees, she was also barred from *attending* committee meetings. Thus, the District attempted to completely bar Ms. Sorcan from even being informed of what goes on at committee meetings so that she could not effectively perform her duties as a Board member.

12. In doing so, the District ignored a Minnesota Attorney General opinion from 1996 which states that elected members of public bodies may attend committee meetings, as recipients of information and without participating, without creating a quorum which would subject the committee meeting to the Open Meeting Law's ("OML") notice requirements for full meetings.

13. Finally, after 17 months of exile, on February 13, 2023, the District and Board Chair reinstated Ms. Sorcan to three (3) committee assignments. Ms. Sorcan continues to have the fewest committee assignments of any elected member of the Board, with others having 4, 5, or even 6 assignments.

14. This lawsuit seeks damages and an injunction to end the Board's ongoing illegal retaliation and punishment against Ms. Sorcan.

PARTIES

15. Plaintiff Pollyann Sorcan resides in Eveleth, Minnesota, in St. Louis County, within the District of Minnesota.

16. Defendant Independent School District 2909 is an independent school district and thus a public corporation existing pursuant to Minn. Stat. § 123A.55 and the Education Code. Its address is 1405 Progress Pkwy, Eveleth, MN 55734, in St. Louis County, within the District of Minnesota.

17. Defendant Board Chair Bill Addy, in his official capacity as Board Chair, and any successor, is sued only in his official capacity. Upon information and belief, he is a resident of Minnesota and within the District of Minnesota.

JURISDICTION AND VENUE

18. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

19. Venue is proper because a substantial part of the events giving rise to the claims occurred in the District of Minnesota. *See* 28 U.S.C. § 1391(b)(2).

STATEMENT OF THE CLAIM

The Integral Significance of Committee Membership

20. Pursuant to ISD 2909 Policy 213 III (C), “[t]he school board chair shall appoint the members of each standing or ad hoc committee and designate the chair thereof.” Although not specifically stated in Policy 213, the Board has a *de facto* custom and policy

of approving the committee appointments by formal vote, reflected in the official meeting minutes.

21. Committee membership is part of every Board member's job and is a privilege of office that comes with election by constituents and membership on the Board.

22. The current Board is made up of seven (7) members and eighteen (18) committees.

23. Six of the seven members of the current ISD 2909 School Board are assigned to at least four (4) if not more committees. Ms. Sorcan is the only member assigned to three (3) committees.

24. Ms. Sorcan requested 6 committee or liaison assignments: 5 committees and 1 liaison.

25. The current committee assignments (January-December 2023) are as follows:

- a. Bill Addy, the current Board Chair, is assigned to three (3) committees and one (1) liaison;
- b. Nicole Culbert-Dahl is assigned to three (3) committees and as one (1) liaison;
- c. Brandi Lautigar is assigned to five (5) committees;
- d. Tim Riordan, the most recent former Board Chair, is assigned to five (5) committees and as one (1) liaison;
- e. Lisa Westby is assigned to four (4) committees;
- f. John Uhan is assigned to five (5) committees and as one (1) liaison; and

g. Plaintiff Pollyann Sorcan is assigned to three (3) committees. From August 9, 2021 through February 13, 2023, Ms. Sorcan was assigned to zero (0) committees. Every other Board member was assigned to committees during that timeframe.

26. Among Ms. Sorcan's committee requests for the current school year were assignments to the Teacher Negotiations/Admin and AFSCME committees, but she was only assigned to one "strand" of those committees, related only to the contract for Teachers, but not for Administration or AFSCME. Because this would create inconsistency across the Board's three negotiation committees, Ms. Sorcan removed herself from the single Teacher "strand" of the committee.

27. According to ISD 2909 Policy 213, Board committees are "advisory in nature" and have "only such authority as specified by the school board."

28. According to practice, custom, and policy, however, Board committees exercise a tremendous amount of influence and power, including making decisions, such as moving from A to AA hockey, without Board approval, and determining which matters come before the full Board.

29. First, Board committees receive information that non-committee members do not receive.

30. Therefore, if a committee item comes before the full Board for a vote, the non-committee Board members may not have all available information on which to base their official vote.

31. Second, committee members have the advantage of deliberating on committee items where their influence is proportionally greater due to small committee sizes.

32. A quorum of the current Board consists of four (4) of seven (7) members. At the time of the censure, the Board had nine (9) members, and so a quorum was five (5) of nine (9).

33. All current committees are made up of less than a quorum of the Board and have three (3) or fewer members. During the time Sorcan was removed from all committees and the Board had nine (9) members, committees had four (4) or fewer members, just under the quorum of five (5).

34. Thus, a committee member's influence is proportionally greater than a non-committee member's influence over the seven (7) members of the full Board.

35. Third, Board committees decide which items will go before the full Board for a vote. At Board committee meetings, ISD 2909 Superintendent Noel Schmidt poses to committee members the choice of whether or not to bring a particular topic, item, or action before the full Board. Thus, with a three-member committee, it could be that only two (2) members of a committee present (a quorum of that committee) at a meeting may direct the Board's agenda items.

36. This power is equivalent to taking action without the deliberation and vote of the full Board.

37. In practice, the choice not to bring an item to the full Board by a committee effects a Board action without a quorum of the Board and thereby usurps the rights of the

full Board (since, again, committees are only supposed to be delegated power to recommend, not decide, Board actions).

38. At those same committee meetings, Superintendent Schmidt also asks committee members if they want to add any items to the committee meeting agenda and allows additional items to be discussed at the request of committee members.

39. The modification of the agenda for committee meetings, which are special meetings, also violates the OML. Minn. Stat. § 13D.04, subd. 1; *see also* Adv. Op. 19-006, Rockville City Council, available at <https://mn.gov/admin/data-practices/opinions/library/opinions-library.jsp?id=36-379354>.

40. Moreover, even when committee items do come before the Board, the Board enforces an unwritten policy by which Board members are to extend great deference to committee recommendations and critical discussion is discouraged, thereby silencing members like Ms. Sorcan who ask questions.

41. Various members of the Board have expressed the opinion that the full Board should respect the time and work of committee members and trust in the wisdom of their recommendations.

42. This “respect” often means rubber-stamping committee recommendations. Committee recommendations are often accepted with little or no additional discussion.

43. Board members who may disagree with a proposed recommendation or else want more detailed information or discussion face accusations by other Board members of lacking trust in or undermining the committee’s work. Ms. Sorcan has faced those accusations.

ISD 2909's Board Meeting of Monday, August 9, 2021 and the Preceding Events

44. Ms. Pollyann Sorcan is and has been a member of the ISD 2909 Board and the prior Eveleth and Eveleth-Gilbert School Boards for over 20 nonconsecutive years.

45. In her capacity as an elected Board member, Ms. Sorcan attends Board meetings and (except for August 9, 2021 through February 13, 2023) attends Board committee meetings as part of the committee at which she advocates on behalf of the interests of her constituents. Ms. Sorcan also attends committee meetings to which she is not assigned, to learn their content, but does not participate in those committee meetings.

46. From August 9, 2021 through February 13, 2023, Ms. Sorcan attended committee meetings to which she was not assigned but was unable to participate in them because she was not a member of any committees. She did not participate in any such meetings as a Board member.

47. Ms. Sorcan's advocacy at full Board meetings includes raising questions and comments relevant to the Board's business, supporting or opposing Board strategies or actions, and other such speech.

48. Unfortunately, as has been thoroughly detailed in recent reports by journalist John Ramos of the Duluth Monitor, other Board members frequently interrupt, cut off, make disparaging remarks against, or even *silence* Ms. Sorcan during official Board meetings, in violation of the Code of Ethics embodied in ISD 2909 Policy 209. Mr. Ramos' reporting is available at <https://www.duluthmonitor.com/2023/01/20/raucous-ridge-minnesotas-newest-school-board-silences-citizens-crushes-dissent-throws-meetings-into->

[chaos/](#) and <https://www.duluthmonitor.com/2023/02/09/raucous-ridge-part-ii-stacey-calls-for-backup/>.

49. Mr. Ramos’ reporting includes a litany of abusive and disrespectful actions taken by other Board members against Sorcan, including but not limited to the following:

- a. On August 10, 2020, former Board Chair Stacey Sundquist cut off Sorcan by saying “Nope! Nope! Nope!” when Sorcan was asking about the reasoning for a new scheduling model to address COVID-19 spread concerns.
- b. On August 24, 2020, when Sorcan stated her concerns about the way in which former Chair Sundquist treated public commenter Katherine Disterhaft, Chair Sundquist repeatedly interrupted Sorcan and then actually *muted* her Zoom audio, silencing her.
- c. A motion to place Unfinished Business and Board Member Topics on the agenda passed on July 13, 2020. But Chair Sundquist unilaterally decided not to observe the full Board’s vote for the September 14, 2020 Board meeting. When Sorcan brought this up, Sundquist disregarded her statement and refused to place those items on the agenda.
- d. After the Board passed Policy 206 regarding Visitor Input after three readings, which allowed public comment “on any topic,” Director Riordan stated his intent not to honor that policy in a September 28, 2020 meeting. Sorcan pointed out the language of the policy at that meeting. However, the Board ignored the language of the policy at the October 26, 2020 meeting when Chair Sundquist stopped Katherine Disterhaft from speaking on issues not expressly on the agenda. Sorcan pointed out that Chair Sundquist was violating the Policy.
- e. On January 25, 2021, Sorcan asked Director Matt Sjoberg about his reasoning behind a motion to hold a special election in November. Sjoberg responded directly to Sorcan in an accusatory tone and did not answer her question. When Sorcan attempted to explain what she was asking, Chair Sundquist, instead of allowing discussion, criticized Sorcan’s question, refused to allow her to explain why she was asking for Sjoberg’s reasoning, and instructed her not to directly ask questions of another Board member—even though she was responding to a direct statement. Chair Sundquist then repeatedly cut off Sorcan and falsely (and loudly) declared, “you are out of order, Director Sorcan!”

- f. Upon information and belief, both before and after her August 9, 2021 censure, other members of the Board disrespected and silenced Sorcan in her attempt to exercise her authority as a member of the Board.

50. Upon the formation of the Rock Ridge School District, July 1, 2020, Ms. Sorcan was appointed to fewer committees than any other Board Member.

51. At some time in 2021, approximately May, she was removed from the Teacher Negotiations/Admin Committee because she expressed her view that she was unsure that she could caucus privately with other committee members during negotiations and elected not to do so until it could be verified that doing so was allowable under the OML.

52. In her work as part of the Eveleth-Gilbert School District, then-Eveleth-Gilbert Superintendent, Jeff Carey, did not allow the Eveleth-Gilbert board member negotiation committees to privately caucus during teacher and AFSCME negotiation meetings, based on his understanding from the Bureau of Mediation Services that it was not allowed under the OML.

53. Initially, upon becoming a school board member of Rock Ridge, Ms. Sorcan did privately caucus during negotiations. Subsequently, she recalled Jeff Carey's practice, realized that she may have been mistaken in doing so, expressed her understanding of the OML, and did not partake in further private caucusing. She attempted to get clarification from the Bureau of Mediation Services, but they did not clarify the issue.

54. Subsequently, the Minnesota School Board Association hosted an online workshop where Ms. Sorcan asked whether private caucusing by a school board

negotiation committee was allowed under the OML, and an MSBA legal department representative indicated that it was not.

55. Ms. Sorcan also reached out to the Data Practices Office at the Department of Administration on multiple occasions to inquire about whether private caucusing during negotiations would violate the OML.

56. Ultimately, the Data Practices Office opined that if the group caucusing is a committee of the school board, then it is subject to the OML.

57. Upon information and belief, Ms. Sorcan was removed from the Teacher Negotiations/Admin Committee because of her assertion that private caucusing was illegal and her good-faith attempt to comply with the OML. This was retaliation for her expression of dissent from the other members' interpretation of the OML.

58. On Friday, August 6, 2021, the Board meeting agenda packet was sent to the members of the Board, which contained the itinerary for the upcoming Board meeting on Monday, August 9, 2021.

59. In agenda item 10, the Board meeting agenda packet referenced a "Closed Session for preliminary consideration of allegations against an individual who is subject to the Board's authority pursuant to Minn. Stat. 13D.05, subd. 2(b)."

60. In agenda item 11, the Board meeting agenda packet referenced an "Open Session: Possible action based on the topics discussed in closed session."

61. That same day, on Friday, August 6, 2021, Ms. Sorcan emailed Superintendent Schmidt from her school email account asking him whether or not the

subject of the closed session had been notified, because the person would have the legal option to request that the session be open to the public.

62. Ms. Sorcan did not hear back from Superintendent Schmidt on Friday and did not check her school email over the weekend.

63. On Monday, August 9, 2021, the day of the Board meeting, Ms. Sorcan discovered in her school email account a reply email from Superintendent Schmidt dated Saturday, August 7, 2021.

64. To Ms. Sorcan's knowledge and memory, Superintendent Schmidt had not before sent a Board-related email on non-school days.

65. From Superintendent Schmidt's reply email, Ms. Sorcan learned that the closed session would be about her and that the Board would be considering a "Resolution Censuring A School Board Member" ("Resolution"), of which she was the subject.

66. Superintendent Schmidt's reply email contained a draft copy of the Resolution to censure Ms. Sorcan.

67. Thus, Ms. Sorcan only learned about the Resolution and that she was the subject of the closed session on Monday, August 9, 2021, the day of the Board meeting.

68. Upon information and belief, several events indicate that the members of the Board other than Ms. Sorcan met privately, by serial or other meetings, by email, in person, by phone, or other electronic communication, to discuss a censure plus punishment of Ms. Sorcan, in violation of the OML:

- a. Prior to the August 9, 2021 meeting, a Policy Committee meeting was held on May 18, 2021 (with only one day's notice, in contravention of the OML) at which removal and/or censure was discussed.

- b. Subsequently, at the May 24, 2021 Board meeting, Policy 209, School Board Member Code of Ethics, was read in its entirety, and at least a quorum of the Board at the time made comments regarding ramifications of the Policy.
- c. At the August 9, 2021 meeting, the initial agenda called for going into closed session for “preliminary consideration of allegations against an individual subject to [the Board’s] authority.”
- d. However, that closed session never occurred because Ms. Sorcan invoked her right that the discussion be open. Yet at the open August 9, 2021 meeting, no member commented, discussed, or asked any questions related to the censure, its allegations, how the censure resolution was created, or otherwise, indicating that they already knew why and how the censure resolution was conceived and drafted.
- e. To date, Ms. Sorcan is not aware of any formal allegations or complaints lodged against her prior to this meeting, and no protocol was followed for investigation, which should have occurred pursuant to Policy 103.

69. During the Board meeting on Monday, August 9, 2021, Ms. Sorcan forwarded a motion to delete the censure resolution from the agenda, but the motion died for lack of a second.

70. Ms. Sorcan then requested that the session concerning the Resolution to censure her be made open to the public, pursuant to Minn. Stat. § 13D.05, subd. 2(b).

71. Chair Stacey Scholz (formerly Sundquist) granted Ms. Sorcan’s request for open session, as law required her to do.

72. At the same time, Ms. Sorcan also stated that she believed she was entitled to legal representation and that, because she had only learned of the matter that morning, there had not been proper time to consider its details and possibly to retain legal representation.

73. Chair Scholz replied to Ms. Sorcan that she was “not entitled to legal representation” because “it’s not a due process hearing.”

74. Chair Scholz also claimed that Ms. Sorcan had notice of the Resolution as early as “Thursday or Friday” of the previous week and that if Ms. Sorcan had wanted more time she “should have discussed it before today.”

75. At the Board meeting, Ms. Sorcan denied each and every allegation contained in the Resolution.

76. At the Board meeting, Ms. Sorcan requested that the Board provide proof and documentation for the allegations contained in the Resolution; especially, references to the specific dates of her alleged infractions and the specific parts of the Board policies and laws that the alleged infractions supposedly violated.

77. Besides Ms. Sorcan’s comments and questions on the Resolution, no other Board member said anything, neither in comment or question; in short, there was no discussion.

78. The Board did not answer or respond to any of Ms. Sorcan’s questions or comments. The Board failed to provide any support for its allegations.

79. The August 9, 2021 meeting is publicly available at <https://www.youtube.com/watch?v=Q1FQ9e8V50o&t=3704s>.

The Board’s Resolution Censuring Ms. Sorcan and Removing Her From All of Her Committees

80. On August 9, 2021, the Board passed the Resolution Censuring A School Board Member (“Resolution”) that censured Ms. Sorcan, and the District and Board Chair

removed her from all of her assigned committees.

81. The Resolution makes the following allegations:

- a. “Ms. Sorcan has failed to respect and follow the District’s policies, including the District’s Rules of Order at Board meetings”;
- b. “Ms. Sorcan has failed to respect data privacy laws while acting in her capacity as a Board member”; and
- c. “Ms. Sorcan has failed to carry out the District’s mission and has actively undermined the District’s mission by refusing to work with the Board’s Negotiation Committee on a contract, undercutting the District’s mission on social media, and more.”

82. The Resolution supports its censure of Ms. Sorcan with the following reasons:

- a. “Ms. Sorcan has violated District policy and has failed to take direction from the Board Chair. [...]. Ms. Sorcan has been unwilling to accept direction from the Board Chair, Stacey Sundquist, in Board meetings. Ms. Sorcan tends to waste time with questions and non-tangential comments. For example, Ms. Sorcan consistently brings up older topics the Board has already discussed and acted upon”;
- b. “Ms. Sorcan has failed to respect data privacy laws, District Policy 205 (Open and Closed Meetings), and District Policy 406 (Public and Private Personnel Data). She revealed private data at a general Board meeting, including private data on personnel issues, which was previously discussed in closed session. This conduct violates District policy and data privacy under the Minnesota Government Data Practices Act, which all public officials must follow”; and
- c. “[...]. Ms. Sorcan has at times acted against the mission of the District. For example, she has been unwilling to accept the District’s legal counsel’s advice and has failed to support Board actions after action has been taken in Board meetings. She has also undermined Board committees; for example, she was removed from the Negotiation Committee for refusing to sit down with the Committee to discuss a new contract. Ms. Sorcan has also published misleading and inaccurate social media posts which contradict official Board actions and discussions.”

83. The Resolution alleges that “Ms. Sorcan has been advised of many of these concerns” and that the conduct alleged “demonstrates that Ms. Sorcan abdicated her responsibilities as a member of the Board in favor of her personal interests.”

84. Finally, the Resolution states that the Board “hereby removes Ms. Sorcan from any and all School Board committee assignments until such time as the Board decides that Ms. Sorcan may again be assigned to committees.”

85. As stated above, Ms. Sorcan denied all these allegations and requested further proof of their claims, but the Board provided none.

86. The allegations in the censure notice are either false or insufficient grounds for censure of a Board member, or both.

87. The allegations in the censure notice and the District and Board Chair’s actions in censuring Sorcan and removing her from committees were designed to stifle Sorcan’s speech and expression, make it impossible for her to perform her duties as a Board member, and make it impossible for her to adequately represent her constituents by exercising the full powers of an elected, co-equal member of the Board.

**ISD 2909 Passed the Resolution in Retaliation Against
Ms. Sorcan’s Protected First Amendment Speech and Expression**

88. To Ms. Sorcan’s knowledge, no other ISD 2909 School Board member, nor any member of any prior school boards on which Ms. Sorcan has served, has ever been censured or removed from his or her committees for any reason, despite there being, at one point, a restraining order between members of the Eveleth-Gilbert school board in 2018.

89. To Ms. Sorcan’s knowledge, in all her time serving on any Board, from 1987 to the present, she has never been the subject of a formal complaint.

90. None of the Resolution’s allegations specify the date on which the alleged misconduct occurred or detail facts supporting the alleged misconduct.

91. However, most of the Resolution’s allegations are targeted at protected speech and expression:

- a. The Resolution alleges that “Ms. Sorcan tends to waste time with questions and non-tangential comments,” but raising questions and “non-tangential” (i.e. relevant) comments is part of her responsibilities as an elected Board member advocating on behalf of her constituents.
- b. The Resolution alleges that Ms. Sorcan “has been unwilling to accept the District’s legal counsel’s advice.”
 - i. This appears to refer to Sorcan’s May 14, 2021, email to ISD 2909 Superintendent Noel Schmidt and ISD 2909’s attorney responding to an opinion letter of April 22, 2021.
 - ii. Ms. Sorcan’s email expressing her own opinion on the subject matter was within her free speech rights, and the Board details no incident in which Ms. Sorcan’s conduct contradicted ISD 2909’s attorney’s advice.
 - iii. Upon information and belief, there is no obligation under Minnesota law, consistent with the First Amendment, that requires a Board member to accept the advice of the Board’s attorney on matters deliberated and decided by the Board.
- c. The Resolution alleges that Ms. Sorcan has “published misleading and inaccurate social media posts which contradict official Board actions and discussions,” which is both conclusory and targets speech protected by the First Amendment.

92. From August 9, 2021 through February 13, 2023, former Board Chairs Scholz and Riordan and the District failed and refused to assign Ms. Sorcan to any committees as punishment for her speech and advocacy.

93. During that time, Ms. Sorcan was the only Board member of the nine on the Board who was prohibited from serving on a committee.

94. On February 13, 2023, Board Chair Addy finally assigned Ms. Sorcan to three committees and no liaisons. Ms. Sorcan alone has the fewest committee and liaison assignments of any Board member, and some members have six assignments.

95. As noted above, Ms. Sorcan was appointed to one “strand” of the Teacher Negotiations/Admin committee, but, upon information and belief, she was not fully appointed to that committee in retaliation for her objection to other Board members’ interpretation of the OML as not allowing private caucusing among members of the District’s negotiating team.

96. Chair Addy and some other Board members voiced pretextual reasons for only assigning Ms. Sorcan to one strand of the Teacher Negotiations/Admin Committee. These reasons include the allegation that Ms. Sorcan could not be part of the AFSCME negotiations because her brother would be affected by those negotiations. This is clear pretext for retaliation—Director Tom Tammaro’s brother was also affected by the AFSCME negotiations, yet no concerns were ever voiced about his membership in that committee in the past. Ms. Sorcan had served on the negotiations committees for the Eveleth, Eveleth-Gilbert, and Rock Ridge districts in the past with no formal concerns.

97. Thus, the Board continues to punish Ms. Sorcan for her speech via the censure and committee under-assignment.

98. Therefore, because these allegations target Ms. Sorcan's protected First Amendment speech, and the other allegations are so vague as to defy defense, the Resolution retaliates against Ms. Sorcan for her protected First Amendment speech and expression, both as an individual and as a Board member.

99. The Board's Resolution removing Ms. Sorcan from her committees was a materially adverse action because it denied her the privilege of committee membership and thereby prevented her from fully advocating on behalf of her constituents.

The Board Continues to Retaliate Against Sorcan

100. On November 16, 2022, ISD 2909 held a public negotiation committee meeting related to the Superintendent's contract, which expires June 30, 2023.

101. Ms. Sorcan attempted to attend the meeting.

102. Then-Board-Chair Riordan refused to allow Ms. Sorcan to enter, and when Ms. Sorcan reached for the handle of the partly open door to make her way inside, Mr. Riordan pulled the door shut and told Ms. Sorcan from inside that she could not enter, and the door locked.

103. At that point, a gentleman who had observed the interaction opened one of the two doors to allow Ms. Sorcan to enter.

104. Mr. Riordan then attempted to physically block Ms. Sorcan's entrance. Ms. Sorcan told him not to touch her, and she made her way inside.

105. As Ms. Sorcan and Mr. Riordan walked down the hallway to the meeting room, Mr. Riordan stated that Ms. Sorcan's presence among the public would cause the meeting to have a quorum and violate the OML.

106. Ms. Sorcan told Mr. Riordan that his interpretation of the OML was incorrect, and that she had a right to attend.

107. After the meeting, to ensure she did not partake in any way, Ms. Sorcan asked Mr. Riordan for a copy of the Superintendent's current contract (he had several extras), which is a public document. Mr. Riordan refused to give Ms. Sorcan a copy of the contract and refused to allow her to inspect it, stating that he would not give her a copy because she is a board member. This action violated Minn. Stat. § 13D.01, subd. 6.

108. At a subsequent November 30, 2022 Negotiation Committee meeting, where Ms. Sorcan again attempted to attend, Board member Brandi Lautigar walked out of the meeting, claiming that she had "talked to the MSBA [Minnesota School Boards Association]" and that the meeting should not proceed because Ms. Sorcan was present, and she did not want to participate in a potentially illegal meeting. Thus, the meeting ended.

109. Mr. Riordan, Ms. Lautigar, and Defendants have improperly interpreted the OML. The Minnesota Attorney General has decisively interpreted the OML as allowing non-committee Board members to attend committee meetings, so long as they do not participate, without creating a quorum that requires notice of a full Board meeting. Op. Att'y Gen. 63a-5 (August 28, 1996), available at <https://www.ag.state.mn.us/office/opinions/63a5-19960828.pdf> (last visited Apr. 25, 2023); *see also* Minn. Stat. § 8.07.

110. Defendants' incorrect interpretation of the OML is pretext for yet another attempt to prevent Ms. Sorcan from being informed of committee work and undermine her ability to effectively serve as a Board member.

111. Further supporting the District's and Chair's mere pretext for punishing Ms. Sorcan, the District does not scrupulously adhere to the OML in other situations, including:

- a. The District provided no notice for a recent 2023 committee meeting at which the committee agreed to "opt-up" the District boys' hockey team from A to AA in the MSHSL competition class system, without a vote of the full Board.
- b. The District does not always give the required 3-day notice before committee meetings, which are special meetings under the OML.

112. The April 10, 2023 Board meeting made Defendants' pretext even more clear. During that meeting, the Board discussed the OML. As part of that discussion, Board members described their views of the OML.

113. First, Superintendent Schmidt summarized some of the District's attorney's view on the OML's requirements for notice and quorum at committee meetings. Superintendent Schmidt summarized in part by stating:

- a. "most of the committee meetings...they're not school board meetings in the sense that they must be posted three days ahead of time, they do not make decisions, they make recommendations..."
- b. "Here's what the issue is: how many board members can be present at a committee meeting?...we have had instances where four board members have been to a committee....this is making some people uncomfortable...."

114. As noted above, Superintendent Schmidt's statement that committees do not make decisions is not always true, as committees have made decisions without the full

Board, and they make decisions as to what to bring to the Board's full meetings, thus preventing some items from being acted upon by the full Board.

115. Former Board Chair and current Director Tim Riordan then stated that he asked this topic to be presented at the April 10, 2023 Board meeting. He stated, "I have walked out of ...committee meetings because there was already three Board members there...and that's not fair to me."

116. Riordan then said, after some brief discussion, that he viewed the problem as "the fourth Board member is getting the same information as the three that are on the committee, which means, if it came to a board..., that fourth board member would have more knowledge of what happened at the committee meeting, and they're not supposed to have that knowledge."

117. At that point, Ms. Sorcan could not help but say, "what are you talking about?"

118. Riordan responded pointedly at Ms. Sorcan: "Well you know...if you want to continue to come, Polly, I'm just going to have to file a complaint, that's all."

119. Riordan doubled down on his concern that those attending committee meetings passively are "going to have information that other Board members are not privy to until the Board meeting."

120. In other words, the District and former Board Chair Riordan knew and intended, while Ms. Sorcan was removed from all committees as part of the censure-plus-punishment, that Ms. Sorcan would not be able to inform herself as to the committees' work and would thus not be able to perform her duties as an elected Board member.

121. Riordan's statements, as well as those of Director Lautigar, indicate that the District used the OML as pretext to stop Ms. Sorcan from receiving information and speech and thus being informed as a Board member of the District's business, all as punishment for her speech.

Article III Standing

122. Plaintiff has Article III standing to bring her claim. She has suffered injury-in-fact because the District censured her and removed her from all of her committee assignments, and continues to refuse to allow her equal representation on committees with her co-equal directors on the Board. Plaintiff's injuries were caused by Defendants' unconstitutional behavior, and the injuries will be redressed by an award of money damages and an injunction against Defendants' ongoing action against Plaintiff, plus appropriate penalties and fees.

CAUSES OF ACTION

123. Plaintiff has set forth a short and plain statement showing her entitlement to relief that is substantially plausible under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662, and *Johnson v. City of Shelby*, 135 S. Ct. 346 (2014), and further identifies discrete claims for relief, which include but are not limited to the following.

Count One
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201, et seq.

Defendants' First Amendment Retaliation

124. Plaintiff incorporates the preceding paragraphs by reference.

125. In the course of carrying out her duties pursuant to her elected office, Plaintiff engaged in constitutionally protected speech to advance the interests of her constituents.

126. As a result of exercising her right and duty to speak, as alleged herein, Plaintiff was subject to censure and removed from all of her committee assignments by the Board's Resolution.

127. Defendants' asserted reasons for censuring Plaintiff were pretextual and a cover-up for their distaste for Plaintiff's speech and advocacy.

128. Plaintiff's censure and removal from committees by Defendants, and Defendants' subsequent refusal to fully reinstate Plaintiff to the same committee status as the other Board members, would chill a person of ordinary firmness from continuing to engage in protected speech.

129. Plaintiff's censure and removal barred her from speaking in forums to which she previously had access due to her elected position.

130. Plaintiff's censure and removal deprived her of the privileges granted to all other Board members and prevented her from fully executing the responsibilities of her office.

131. ISD 2909 and the Board Chair censured and removed Plaintiff from committees because they disagreed with her opinions, comments, and the questions she raised.

132. The censure-plus-punishment is a custom, practice, or policy which gives rise to liability under 42 U.S.C. § 1983 for ISD 2909.

133. ISD 2909 and the Board Chair's censure and removal of Plaintiff from committees thus violates the First Amendment to the U.S. Constitution, and Article I, Section 3 of the Minnesota Constitution, and it has damaged Plaintiff.

134. Plaintiff is entitled to actual, general, compensatory, and nominal damages, penalties, punitive damages, declaratory and injunctive relief, and fees to redress and remedy Defendants' violation of her rights.

Count Two
42 U.S.C. § 1983, 1988
28 U.S.C. § 2201, et seq.
Minn. Stat. § 555.01, et seq.
Minn. Stat. § 13D.06

Declaratory Judgment – Construction of Minnesota's Open Meeting Law

135. Plaintiff incorporates the preceding paragraphs by reference.

136. There is an actual controversy between Plaintiff and Defendants about whether Plaintiff may attend committee meetings in a passive manner and without participation without creating a quorum under Minnesota's OML that would trigger the obligation to provide notice of a Board meeting to District residents.

137. The Minnesota Attorney General has decisively interpreted the OML as allowing exactly that without creating a quorum that requires notice of a Board meeting in addition to a committee meeting. Op. Att'y Gen. 63a-5 (August 28, 1996), available at <https://www.ag.state.mn.us/office/opinions/63a5-19960828.pdf> (last visited Nov. 30, 2022); *see also* Minn. Stat. § 8.07.

138. Nonetheless, Defendants have stated an interpretation of the OML as forbidding Plaintiff from attending committee meetings if her attendance would result in 4

of 7 Board members being in attendance, even if only 3 members are participating in the committee meeting. As such, Defendants have created a practice and policy that forbids Plaintiff from attending committee meetings of three.

139. There are five (5) three-member District committees on which Plaintiff does not serve. Plaintiff attends these committee meetings when she is able, despite Defendants' interpretation, practice, and policy.

140. Defendants' interpretation violates Plaintiff's First Amendment right to receive information relevant to her decisions as a Board member, and as a member of the public.

141. Defendants' interpretation is pretext for stopping Plaintiff from fully representing her constituents by obtaining and presenting informed opinions about matters pertaining to District policy, and thus is retaliation against Plaintiff.

142. Further, there is an actual controversy between Plaintiff and Defendants about whether three days' notice must be provided for any Board committee meeting.

143. Plaintiff believes that Board committee meetings are "special meetings" which require three-day notice prior to being held. Despite this, Defendants have failed to provide three-day notice for several meetings, including the May 18, 2021 Policy Committee meeting which preceded the Board meeting at which Plaintiff was censured.

144. Upon information and belief, Defendants' incorrect application of the OML was used to avoid public scrutiny of the allegations later made against Plaintiff in the censure resolution, and thus was retaliation against Plaintiff.

145. Further, there is an actual controversy between Plaintiff and Defendants about whether members of the Teacher Negotiations/Admin and AFSCME Committees may caucus privately to discuss union negotiations.

146. Plaintiff asserted her understanding of the OML that private caucusing of the committee during negotiations was not allowed, and Defendants insisted that it was allowed.

147. Defendants then removed Plaintiff from the Teacher Negotiations/Admin and AFSCME Committees because she refused to caucus privately with other members of the committee, and used Plaintiff's interpretation of the OML as pretext to later censure her and remove her from her committee assignments.

148. The Court has supplemental jurisdiction over this claim under 28 U.S.C. § 1367, and Plaintiff asks the Court to issue a declaratory judgment and injunction against Defendant's practices and policies used as pretext to censure and punish Plaintiff, and award Plaintiff reasonable attorney fees under 42 U.S.C. § 1988 after appropriate motion for the same.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court grant her relief as follows after a trial by jury, which is demanded:

A. A declaration that ISD 2909 and the Board Chair's actions censuring and removing Plaintiff from all of her committee assignments in retaliation for her exercising her speech in carrying out her elected duties is unlawful and a violation of Plaintiff's rights

under the First Amendment to the United States Constitution and the Minnesota Constitution;

B. An injunction requiring ISD 2909 and the Board Chair to formally rescind the censure and appoint her to a number of committees commensurate with her peers;

C. A declaration that ISD 2909's interpretations and corresponding policies and practices related to the Minnesota OML are legally erroneous and violate Plaintiff's First Amendment rights and rights under the Minnesota Constitution;

D. An injunction allowing Plaintiff to attend committee meetings on which she does not serve; requiring Defendants to provide three-days' notice for any special meeting, including committee meetings; and enjoining Defendants' negotiation committees from caucusing privately during District-union negotiations;

E. An award of general, actual, and nominal damages for Defendants' violation of Plaintiff's rights under the First Amendment to the U.S. Constitution and Article I, section 3 of the Minnesota Constitution;

F. An award of attorney fees in favor of Plaintiff and against Defendants upon Plaintiff prevailing in this litigation and upon post-judgment application for the same, pursuant to 42 U.S.C. § 1988;

G. An award of punitive damages against ISD 2909 because of its intentional, willful, malicious, and/or reckless disregard for Plaintiff's First Amendment rights; and

H. An award of all other relief that the Court may deem just, proper, or equitable.

UPPER MIDWEST LAW CENTER

Dated: April 25, 2023

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